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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,704	02/26/2004	Dieter Stein	12985/3	7582
26646	7590	06/14/2007		
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER DRODGE, JOSEPH W	
			ART UNIT 1723	PAPER NUMBER
			MAIL DATE 06/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/789,704	STEIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Joseph W. Drodge	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 6-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-17 is/are allowed.
- 6) ☒ Claim(s) 18, 19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. <u>20070607</u>                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### ALLOWABLE SUBJECT MATTER

Independent claim 6, and thus claims 7-17 dependent therefrom are now deemed to distinguish over the formerly applied prior art as well as newly applied Mothes et al patent 5,268,283 in view of recitation of forming a suspension which is potassium hydrogentartrate in a process for eventually forming tartaric acid crystals; the prior art form intermediate suspensions of other chemicals especially potassium bitartrate, the associated arguments are thus persuasive regarding these claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 18,19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mothes et al patent 5,268,283 in view of Dabul patent 3,114,770.

Mothes et al disclose apparatus that may be employed in producing tartaric compositions used as detergents, comprising: 1<sup>st</sup> mixing of materials with agitation, decanter/gravity separation device, microfilter, crystallizer in which cooling occurs, centrifuge, 2<sup>nd</sup> mixing or processing of materials with heating, cation exchanger and evaporator. The following text is particularly pertinent: column 5, lines 24-44; column 6, lines 26-36; and column 9, line 40 through column 10, line 8 concerning such units in series. Although the process steps in columns 9-10 do not concern a standard crystallization process, "crystalline layers are nevertheless prepared from seed crystals, hence crystallization is occurring. Column 12, lines 40-45 concern a microfilter.

The claims differ in requiring explicit recitation of the mixing of materials and further processing of materials as occurring in 2 separate tanks. However, Dabul teach to produce tartaric acid from wine dregs raw materials or potassium bitartrate, in a process employing crystallization, using separate tanks, having agitators/stirrers (see column 4, lines 54-57 and column 5, lines 65-73). It would have been obvious to one of ordinary skill in the art to have employed two separate tanks for various of the operations of Mothes et al, as suggested by Dabul, for the inherently obvious motivation

of facilitating mass production or streamlined, batch or continuous production of an industrial product.

The following claim language is considered as concerning intended end use and not necessarily reciting structural limitations, although Mothes and Dabul teach most of the features anyway ; the tanks being heated (no heat exchanger or heater is claimed) or stirred (no agitator is claimed).

For claim 19, although particular raw materials utilized are not a positive apparatus structure, Dabul does teach materials from wine yeast and tartar (column 1, lines 10-15.

Mathes discloses a screen in a discharge from a decanter at column 5, lines 30-31.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mothes patent 5,268,283 in view of Dabul patent 3,114,770, as applied to claims 18, 19 and 21 and further in view of Singh et al PG PUBS Document US2003/0185959. Claim 22 requires a ceramic microfilter with particular pore size range; such is taught by Singh et al for obvious purposes of removing high molecular weight polysaccharides from raw materials derived from juice substances, Mothes et al concerned with juice products.

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Applicant's arguments with respect to claims 18,19,21 and 22 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Drodge at telephone number 571-272-1140. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Roy Sample, can be reached at 571-272-1376. The fax phone number for the examining group where this application is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR, and through Private PAIR only for unpublished applications. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD

June 7, 2007

  
JOSEPH DRODGE  
PRIMARY EXAMINER